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12 MERCK SHARP & DOHME CORP.,  
13 ORGANON & CO., and ORGANON LLC

14  
15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 JAMES CRUZ, an individual,

18 Plaintiff,

19 v.

20 MERCK & CO., INC., a New Jersey  
21 Corporation; MERCK SHARP &  
22 DOHME CORP., a New Jersey  
23 Corporation; ORGANON & CO., a  
24 Delaware Corporation; ORGANON  
25 LLC, a Delaware Limited Liability  
26 Company; and DOES 1-10, Inclusive,

27 Defendants.

28 CASE NO.

**NOTICE OF REMOVAL AND  
REMOVAL OF ACTION UNDER 28  
U.S.C. §§ 1332 (a), 1441(b), AND 1446  
BY DEFENDANTS MERCK & CO.,  
INC., MERCK SHARP & DOHME  
CORP., ORGANON & CO., AND  
ORGANON LLC**

[San Luis Obispo County Superior Court  
Case No. 22CV-0102]

Action Filed: March 3, 2022

Action Removed: April 7, 2022

Trial Date: None Set

1                   **TO THIS HONORABLE COURT AND TO ALL PARTIES AND**  
2                   **THEIR COUNSEL OF RECORD:**

3                   **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441, and  
4 1446, defendants Merck & Co., Inc., Merck Sharp & Dohme Corp., Organon &  
5 Co., and Organon, LLC (collectively, “Defendants”) hereby give notice that the  
6 above-captioned action, pending in the Superior Court of the State of California,  
7 County of San Luis Obispo, is removed to the United States District Court for the  
8 Central District of California. In support of the removal, Defendants respectfully  
9 states as follows:

10                  1. This is a civil action, filed on or about March 3, 2022, by Plaintiff James  
11 Cruz (“Plaintiff”) in the Superior Court of the State of California, County of San  
12 Luis Obispo, entitled *James Cruz v. Merck & Co., Inc., et al.*, San Luis Obispo  
13 County Superior Court Case No. 22CV-0102. Attached to the Declaration of  
14 Shannon E. Beamer as Exhibit 1 is a true and correct copy of the state court filings  
15 Defendants obtained, including the Complaint, Summons, Civil Case Cover Sheet,  
16 and Notice of Case Assignment and Case Management Conference, as well as the  
17 state court docket at the time of filing.

18                  2. This case is properly removed to this Court under 28 U.S.C. § 1441  
19 because Defendants have satisfied the procedural requirements for removal and  
20 this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.<sup>1</sup>

21                  3. This action is among citizens of different states: (1) Plaintiff is a  
22 current citizen of New York, and at the time the alleged injuries occurred, a citizen  
23 of California; (2) Merck & Co., Inc., is now, and was at the time this action  
24 commenced, a citizen of New Jersey; (3) Merck Sharp & Dohme Corp. is now, and

25 \_\_\_\_\_  
26                  1 Defendants file this Notice of Removal without submitting or consenting to the  
27 personal jurisdiction of this Court and expressly reserves the right to challenge this  
28 Court’s ability to exercise personal jurisdiction over Defendants in this case,  
including through a motion to dismiss for lack of personal jurisdiction under  
Federal Rule of Civil Procedure 12(b)(2).

1 was at the time this action commenced, a citizen of New Jersey; (4) Organon &  
 2 Co. is now, and was at the time this action commenced, a citizen of Delaware and  
 3 New Jersey; and (5) Organon LLC is now, and was at the time this action  
 4 commenced, a citizen of Delaware and New Jersey.

5       4. Furthermore, the alleged amount in controversy exceeds \$75,000,  
 6 exclusive of interest and costs, for the reasons more fully briefed below.

7       **I. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET**

8       5. This Notice of Removal is timely filed under 28 U.S.C. § 1446, as it is  
 9 filed within 30 days of Defendants' receipt of the initial pleading purporting to set  
 10 forth the claims for relief on which this action is based.

11       6. Defendants were served with a copy of the Complaint on March 18,  
 12 2022. The filing of this Notice of Removal, therefore, is timely because Defendants  
 13 are filing it "within 30 days after receipt by the defendant, through service or  
 14 otherwise, of a copy of the initial pleading setting forth the claim for relief upon  
 15 which such action or proceeding is based." 28 U.S.C. § 1446(b)(1).

16       7. Pursuant to 28 U.S.C. § 1446(a), Defendants attach to this Notice of  
 17 Removal a copy of the Complaint, Summons, Civil Case Cover Sheet, and Notice  
 18 of Case Assignment and Case Management Conference, as well as the state court  
 19 docket at the time of filing. *See* Beamer Decl. ¶ 3, Ex. 1; *see also* Request for  
 20 Judicial Notice ("RJN"), Ex. 1.

21       8. Pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a), this Notice of  
 22 Removal is being filed in the United States District Court for the Central District of  
 23 California. Venue for this action is proper in this Court under 28 U.S.C. § 1441(a)  
 24 because San Luis Obispo County is located within the United States District Court  
 25 for the Central District of California. *See* 28 U.S.C. § 84(c). Accordingly, the  
 26 Central District of California is the federal "district and division embracing the  
 27 place where such action is pending." 28 U.S.C. § 1441(a).

28

1           9. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing with the clerk  
 2 of the Superior Court of the State of California for the County of San Luis Obispo,  
 3 and serving upon Plaintiff's counsel, a Notice to Adverse Party and State Court of  
 4 Removal of Action to Federal Court, including a true and correct copy of this  
 5 Notice of Removal. Proof of the same will be filed with this Court.

6           10. Defendants have complied with 28 U.S.C. § 1446(b)(2)(A) insofar as  
 7 there are no other defendants that must join in or consent to removal. *See, e.g.*, 28  
 8 U.S.C. § 1446 (b)(2)(A) ("When a civil action is removed solely under section  
 9 1441(a), all defendants who have been properly joined and served must join in or  
 10 consent to the removal of the action."). The other defendants, the unknown  
 11 "DOES 1-10," are not required to join in or consent to removal. *See United*  
 12 *Computer Sys., Inc. v. AT & T Corp.*, 298 F.3d 756, 762 (9th Cir. 2002) (noting  
 13 that the "rule of unanimity" for removal does not apply to "nominal, unknown or  
 14 fraudulently joined parties"); *Fristoe v. Reynolds Metals Co.*, 615 F. 2d 1209, 1213  
 15 (9th Cir. 1980) (holding that removal to federal court was proper as "the unknown  
 16 defendants sued as 'Does' need[ed] not be joined in a removal petition"); *Cont'l*  
 17 *Ins. Co. v. Foss Mar. Co.*, 2002 WL 31414315, at \*4 (N.D. Cal. Oct. 23, 2002)  
 18 (noting that "all defendants in a state action must join in the petition for removal,  
 19 except for nominal, unknown, or fraudulently joined parties.") Thus, Defendants  
 20 may remove without any other parties' concurrence.

21           11. No previous application has been made for the relief requested herein.

22 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS ORIGINAL**  
 23 **JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441**

24           12. This Court has diversity jurisdiction pursuant to 28 U.S.C. §§ 1332,  
 25 1441 because this is a civil action among citizens of different states in which the  
 26 amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

1                   **A. There Is Complete Diversity Among The Parties**

2                   13. This case is between “citizens of different States and in which citizens  
 3 or subjects of a foreign state are additional parties.” 28 U.S.C. § 1332(a)(1). As  
 4 explained below, all Defendants are diverse from Plaintiff.

5                   a. Plaintiff Was A Citizen Of California At Time Of Use Of Singulair  
 6                   And Is Presently a Citizen of New York

7                   14. Plaintiff was a citizen and resident of San Luis Obispo County,  
 8 California at the time he was prescribed and/or ingested Singulair – as well as at  
 9 the time he purported to sustain injuries therefrom. Plaintiff is a citizen of New  
 10 York at the time of filing this Complaint. *See* Compl. ¶ 7.

11                   b. Merck Sharp & Dohme Corp. Is A Citizen Of New Jersey

12                   15. Plaintiff concedes that Merck Sharp & Dohme Corp. is now, and was  
 13 at the time that Plaintiff filed this action, a foreign corporation organized under the  
 14 laws of the State of New Jersey with its principal place of business in New Jersey.  
 15 *See* Compl. ¶ 11; Beamer Decl. ¶¶ 4-5, Ex. 2, California Secretary of State  
 16 Statement of Information for Merck Sharp & Dohme Corp. (stating that Merck  
 17 Sharp & Dohme Corp. is registered within the jurisdiction of New Jersey); RJN,  
 18 Ex. 2. Thus, Merck Sharp & Dohme Corp. is a citizen of New Jersey for purposes  
 19 of determining diversity. 28 U.S.C. § 1332(c)(1).

20                   c. Merck & Co., Inc., Is A Citizen Of New Jersey

21                   16. Plaintiff concedes that Merck & Co., Inc., is now, and was at the time  
 22 that Plaintiff filed this action, a foreign corporation organized under the laws of the  
 23 State of New Jersey with its principal place of business in New Jersey. *See* Compl.  
 24 ¶ 11; Beamer Decl. ¶¶ 6-7, Ex. 3, New Jersey Secretary of State Short Form  
 25 Standing Certificate for Merck & Co., Inc., (stating that Merck & Co., Inc., is a  
 26 domestic for-profit corporation registered within the jurisdiction of New Jersey);  
 27 RJN, Ex. 3; *see also* Beamer Decl. ¶¶ 8-9, Ex. 4, New Jersey Secretary of State  
 28 Business Entity Status Report for Merck & Co., Inc., (stating that Merck & Co.,

1 Inc., is registered within the jurisdiction of New Jersey); RJN, Ex. 4. Thus, Merck  
2 & Co., Inc., is a citizen of New Jersey for purposes of determining diversity.  
3 28 U.S.C. § 1332(c)(1).

d. Organon & Co. Is A Citizen Of Delaware And New Jersey

5       17. Plaintiff concedes that Organon & Co. is now, and was at the time that  
6 Plaintiff filed this action, a foreign corporation organized under the laws of the  
7 State of Delaware with its principal place of business in New Jersey. *See* Compl. ¶  
8 13; Beamer Decl. ¶¶ 10-11, Ex. 5, Delaware Division of Corporations Short Form  
9 Standing Certificate for Organon & Co., (stating that Organon & Co. is a domestic  
10 for-profit corporation registered within the jurisdiction of Delaware); RJN, Ex. 5;  
11 *see also* Beamer Decl. ¶¶ 12-13, Ex. 6, New Jersey Secretary of State Short Form  
12 Standing Certificate for Organon & Co., (stating that Organon & Co. is a foreign  
13 for-profit corporation with its principal place of business within the jurisdiction of  
14 New Jersey); RJN, Ex. 6. Thus, Organon & Co. is a citizen of both Delaware and  
15 New Jersey for purposes of determining diversity. 28 U.S.C. § 1332(c)(1).

e. Organon LLC Is A Citizen Of Delaware and New Jersey

17       18. Plaintiff concedes that Organon LLC is now, and was at the time that  
18 Plaintiff filed this action, a foreign limited liability company organized under the  
19 laws of the State of Delaware with its principal place of business in New Jersey.  
20 *See* Compl. ¶ 13; Beamer Decl. ¶¶ 14-15, Ex. 7, Delaware Division of  
21 Corporations Short Form Standing Certificate for Organon LLC (stating that  
22 Organon LLC is a domestic limited liability company registered within the  
23 jurisdiction of Delaware); RJN, Ex. 7; *see also* Beamer Decl. ¶¶ 16-17, Ex. 8, New  
24 Jersey Secretary of State Short Form Standing Certificate for Organon LLC  
25 (stating that Organon LLC is a foreign for-profit limited liability company with its  
26 principal place of business within the jurisdiction of New Jersey); RJN, Ex. 8.

1 Thus, Organon LLC is a citizen of both Delaware and New Jersey for purposes of  
 2 determining diversity. 28 U.S.C. § 1332(c)(1).<sup>2</sup>

3 f. Citizenship Of The DOE Defendants Shall Not Be Considered

4 19. The citizenship of the DOE defendants shall not be considered for  
 5 purposes of determining diversity jurisdiction, as these are fictitious defendants.  
 6 See 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on  
 7 the basis of the jurisdiction under section 1332(a) of this title, the citizenship of  
 8 defendants sued under fictitious names shall be disregarded.”).<sup>3</sup>

9 20. Based on the above, there is complete diversity among Plaintiff and  
 10 Defendants, and this Court has diversity jurisdiction under 28 U.S.C. § 1332; see

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12 <sup>2</sup> Organon & Co. is the sole member of Organon LLC. See Beamer Decl. ¶¶ 18-  
 13 19, Ex. 9, California Secretary of State Statement of Information for Organon LLC  
 14 (listing Organon & Co as membership for Organon LLC). The citizenship of  
 15 entities other than corporations is determined by the citizenship of their members.  
 16 See *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990); *Johnson v. Columbia Props.*  
 17 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Because Organon & Co. is a  
 18 citizen of New Jersey and Delaware, Organon LLC is therefore deemed a citizen of  
 19 those two states, as well.

20 <sup>3</sup> In the event that any DOE defendants are forum defendants, *i.e.*, citizens of  
 21 California for diversity purposes, it is not a bar to removal under 28 U.S.C. section  
 22 1441(b), which provides that removal is allowed only if “none of the parties in  
 23 interest properly joined and served as defendants is a citizen of the State in which  
 24 such action is brought.” 28 U.S.C. § 1441(b). Under the plain language of Section  
 25 1441(b), the no forum defendant rule applies only once such defendant has been  
 26 properly joined and served. *Id.*; see also *Allen v. Eli Lilly & Co.*, 2010 WL  
 27 3489366, at \*2 (S.D. Cal. Sept. 2, 2010) (denying motion to remand and upholding  
 28 the removal of the action, finding the presence of local defendants did not preclude  
 removal jurisdiction because no local defendant was a party to the action at the  
 time of removal and complete diversity of the parties continues to exist after the  
 local defendants were or are served and made parties); *Zirkin v. Shandy Media,*  
*Inc.*, 2019 WL 626138, at \*2 (C.D. Cal. Feb. 14, 2019) (denying motion to remand  
 and upholding the forum defendants’ removal before service, finding “the Forum  
 Defendant Rule did not bar an in-state defendant from removing an action before  
 the defendant is served.”); *May v. Haas*, 2012 WL 4961235, at \*3 (E.D. Cal. Oct.  
 16, 2012) (denying motion to remand and upholding the removal of the action,  
 finding that the forum defendant had not been served at the time the non-forum  
 defendant removed the case and complete diversity continues to exist between the  
 parties after the forum defendant has been served.); *Loewen v. McDonnell*, 2019  
 WL 2364413, at \*9 (N.D. Cal. June 5, 2019) (denying motion to remand, finding  
 the removal was effective before any forum defendant was served and complete  
 diversity continues to exist between the parties); *id.* at \*7 (holding “the Northern  
 District of California has consistently held a defendant may remove an action prior  
 (continued...)

1       *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) (“diversity  
 2 jurisdiction does not exist unless each defendant is a citizen of a different State  
 3 from each plaintiff”).

4           **B. The Amount-In-Controversy Requirement Is Satisfied**

5       21. The amount in controversy exceeds \$75,000 notwithstanding that  
 6 Plaintiff does not allege a specific amount in controversy in the Complaint.<sup>4</sup>

7       22. Under 28 U.S.C. § 1446(c)(2):

8           If removal of a civil action is sought on the basis of the  
 9 jurisdiction conferred by section 1332(a), the sum demanded in  
 10 good faith in the initial pleading shall be deemed to be the  
 11 amount in controversy, except that:

12           (A) the notice of removal may assert the amount in  
 13 controversy if the initial pleading seeks . . . (ii) a money  
 14 judgment, but the State practice either does not permit  
 15 demand for a specific sum or permits recovery of damages  
 16 in excess of the amount demanded, and

17           (B) removal of the action is proper on the basis of an amount  
 18 in controversy asserted under subparagraph (A) if the  
 19 district court finds, by the preponderance of the evidence,  
 20 that the amount in controversy exceeds the amount  
 21 specified in section 1332(a).

22           28 U.S.C. § 1446(c)(2)(A)-(B); Federal Courts Jurisdiction and Venue  
 23 Clarification Act of 2011, Pub. L. 112-63, Dec. 7, 2011.

24           to receiving proper service, even when the defendant resides in the state in which  
 25 the plaintiff filed the state claim”); *Cucci v. Edwards*, 510 F. Supp. 2d 479, 482  
 26 (C.D. Cal. 2007) (holding that “a resident defendant who has not been served may  
 27 be ignored in determining removability”); *City of Ann Arbor Employees’  
 Retirement Sys. v. Gecht*, 2007 WL 760568, at \*8 (N.D. Cal. Mar. 9, 2007)  
 (holding that “[p]laintiff should have been cognizant of the fact that a nonresident  
 defendant could remove a case without having been served”); *Republic W. Ins. Co.  
 v. Int’l Ins. Co.*, 765 F. Supp. 628, 629 (N.D. Cal. 1991) (denying motion for  
 remand where local defendant had not been served at time of removal).

28           <sup>4</sup> Defendants deny all allegations contained in Plaintiff’s Complaint and denies that  
 Plaintiff is entitled to any relief sought.

1       23. When a plaintiff does not allege a specific amount for damages, the  
 2 removing defendant need only show that the amount in controversy is “more likely  
 3 than not” to exceed the jurisdictional amount of \$75,000, exclusive of interest and  
 4 costs. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).  
 5 Where the amount in controversy is not specified, courts look to the facts alleged  
 6 in the complaint as well as in the notice of removal. *See Simmons v. PCR Tech.*,  
 7 209 F. Supp. 2d 1029, 1031 (N.D. Cal. 2002) (“Where the amount of damages  
 8 sought by a plaintiff is unclear, defendant must prove facts supporting the  
 9 jurisdictional amount by a preponderance of the evidence”); 28 U.S.C. §  
 10 1446(c)(2). Courts may receive extrinsic evidence to determine whether the  
 11 amount in controversy is more likely than not to exceed \$75,000. *See Valdez v.*  
 12 *Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (“[T]he amount-in  
 13 controversy inquiry in the removal context is not confined to the face of the  
 14 complaint.”). Indeed, courts may find an estimate of damages based upon damage  
 15 awards in similar cases as sufficient evidence to prove by a preponderance of the  
 16 evidence that a plaintiff’s claims exceed the jurisdictional limit. *See Karlsson v.*  
 17 *Ford Motor Co.*, 140 Cal. App. 4th 1202, 1207 (2006) (awarding damages in  
 18 excess of the jurisdictional amount of \$75,000 in product liability case); *Jones v.*  
 19 *John Crane, Inc.*, 132 Cal. App. 4th 990, 997 (2005) (same).

20       24. While Plaintiff’s Complaint does not allege a specific amount in  
 21 controversy, Plaintiff alleges that he “has sustained pecuniary loss and general  
 22 damages in a sum exceeding the jurisdictional minimum of this Court.” Compl. ¶¶  
 23 213, 230; Beamer Decl. ¶ 3, Ex. 1. Further, it is facially evident that the amount in  
 24 controversy is satisfied. Plaintiff alleges that he took branded and/or generic  
 25 Singulair (also known as Montelukast) for allergy treatment during the years 2018  
 26  
 27  
 28

1 through 2020<sup>5</sup> pursuant to a prescription by his healthcare provider. Compl. ¶ 8.  
 2 Plaintiff alleges that, after he began taking Singulair, he “suffered neuropsychiatric  
 3 injury including general anxiety and depression.” Compl. ¶ 8.

4       25. Plaintiff alleges he became symptomatic while using Singulair®.  
 5 Compl. ¶ 9. Plaintiff further alleges that he “has incurred medical expenses and  
 6 will continue to incur expenses in connection with medical treatment as a result of  
 7 [his alleged] injuries.” Compl. ¶ 10. Plaintiff also alleges he “has endured and  
 8 will continue to endure pain, suffering, mental anguish, trauma, and loss of  
 9 enjoyment of life as a result of these injuries, have suffered lost earnings and/or a  
 10 loss of earning capacity, and other injuries and damages to be proven at trial.”  
 11 Compl. ¶ 10.

12       26. Accordingly, Plaintiff asserts causes of action for: (1) Strict Liability  
 13 – Design Defect; (2) Strict Liability – Failure to Warn; (3) Negligence; (4);  
 14 Negligent Misrepresentation; (5) Breach of Express Warranty; and (6) Breach of  
 15 Implied Warranty. Compl. ¶¶ 103-233. Plaintiff seeks to recover past and future  
 16 general damages, past and future economic and special damages, loss of earnings  
 17 and impaired earning capacity, medical expenses, past and future, punitive or  
 18 exemplary damages, attorney’s fees, costs of suit incurred, for pre-judgment  
 19 interest as provided by law, and for such other and further relief as the Court may  
 20 deem just and proper. Compl. ¶¶ 8-10, Prayer for Relief at 41:1-10 (Nos.1-9).

21       27. Where, as here, a plaintiff alleges a serious psychological injury,  
 22 California federal courts have found that the amount-in-controversy requirement is  
 23 satisfied. *See, e.g., Bryant v. Apotex, Inc.*, 2012 WL 5933042, at \*4 (E.D. Cal.  
 24 Nov. 27, 2012) (holding the amount-in-controversy requirement was met, although  
 25 “complaint [did] not set forth a specific amount of damages,” because plaintiff

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27       28       <sup>5</sup> Although lacking in detail, Plaintiff also alleges that “[d]uring and prior to 2012,  
 Plaintiff purchased and used [Defendants’] Singulair in San Luis Obispo...”  
 Compl. ¶ 24.

1 sought “compensatory damages for injuries and severe pain lasting six months,  
 2 severe emotional distress, and punitive damages”); *Campbell v.*  
 3 *Bridgestone/Firestone, Inc.*, 2006 WL 707291, at \*2-3 (E.D. Cal. Mar. 17, 2006)  
 4 (holding the amount in controversy exceeded \$75,000 where plaintiffs asserted  
 5 strict product liability, negligence, and breach of warranty claims and sought  
 6 compensatory damages, including lost wages and loss of earning capacity, medical  
 7 expenses, and general damages).

8       28. California cases also reveal that jury awards and settlements based on  
 9 conditions similar to those alleged by Plaintiff may exceed the \$75,000  
 10 jurisdictional amount. *See, e.g., Howard v. Doe Companies*, 2000 Jury Verdicts  
 11 LEXIS 64660 (May 25, 2000) (settlement for \$150,000 for ephedrine-induced  
 12 psychosis, including insomnia and racing thoughts, and ultimately depression);  
 13 *Snyder v. Kaiser Found. Hosp.*, 1997 Jury Verdicts LEXIS 91524 (Sup. Ct. San  
 14 Diego County June 1997) (arbitrator awarded \$360,000 where plaintiff  
 15 experienced hallucinations after taking prescribed medication and incurred  
 16 additional physical injuries as a result); *Confidential v. Confidential*, 2009 Jury  
 17 Verdicts LEXIS 12779 (Sup. Ct. L.A. October 1994) (settled for \$150,000 for  
 18 psychological problems and hallucinations resulting from Prozac prescription);  
 19 *Boller v. Placer Union High Sch. Dist.*, Case No. SCV 7478, 2000 Jury Verdicts  
 20 LEXIS 65056 (Sup. Ct. Auburn County, Apr. 14, 2001) (jury awarded \$158,750  
 21 for depression, insomnia, and anxiety); *Maher v. Ideal Computer Servs., Inc.*, Case  
 22 No. RG07348498, 2009 Jury Verdicts LEXIS 410244 (Sup. Ct. Alameda County  
 23 September, 2009) (awarding \$86,000 for depression, anxiety and emotional  
 24 distress); *Lantz Greene v. Yucaipa Towing Inc.*, Case No. RIC10022388, 2013 Jury  
 25 Verdicts LEXIS 7608 (Sup. Ct. Riv. County June 11, 2013) (awarding \$540,000 in  
 26 emotional distress, lost wages, and punitive damages).

27       29. Likewise, California federal courts recognize that the amount-in-  
 28 controversy requirement is satisfied in analogous product liability cases alleging

1 continuing medical care. *See, e.g., Hammarlund v. C.R. Bard, Inc.*, 2015 WL  
 2 5826780, at \*2 (C.D. Cal. Oct. 2, 2015) (holding it was “more likely than not” that  
 3 the amount in controversy exceeds \$75,000, given the plaintiffs allege “severe”  
 4 bodily injuries and “mental and physical pain and suffering” following the failure  
 5 of defendant’s mesh implant product); *Zalta v. K2M, Inc.*, 2013 WL 12140470,  
 6 at \*2 (C.D. Cal. Nov. 13, 2013) (finding that the defendant demonstrated, by a  
 7 preponderance of the evidence, that the amount-in-controversy requirement was  
 8 satisfied, given that the plaintiff sought “lost wages, hospital and medical  
 9 expenses, general damages, and lost earning capacity” following the installment of  
 10 a defective cervical plate); *Zachman v. Johnson & Johnson*, 2015 WL 7717190  
 11 (N.D. Cal. Nov. 30, 2015) (amount-in-controversy requirement satisfied where  
 12 prescription medication Levaquin allegedly caused the plaintiff’s peripheral  
 13 neuropathy).

14       30. Considering the nature and extent of Plaintiff’s alleged injuries and  
 15 damages, Plaintiff’s claims exceed this Court’s minimum \$75,000 jurisdictional  
 16 limit.

17       31. Based on the foregoing, Plaintiff’s state court action may be removed  
 18 to this Court in accordance with the provisions of 28 U.S.C. §§ 1332 and 1441  
 19 because: (1) this is a civil action pending within the jurisdiction of this Court;  
 20 (2) this action is among citizens of different states; and (3) the amount in  
 21 controversy exceeds \$75,000, exclusive of interest and costs.

22       32. This Notice of Removal has been signed pursuant to  
 23 Fed. R. Civ. P. 11.

24       33. By filing the Notice of Removal, Defendants do not waive any  
 25 objections as to service, jurisdiction, venue, or any other defenses available at law,  
 26 in equity or otherwise. Defendants intend no admission of fact or law by this  
 27 Notice of Removal and expressly reserve all defenses and motions. Defendants  
 28 also reserve the right to amend or supplement this Notice of Removal.

1       34. If Plaintiff seeks to remand this case to state court, Defendants  
2 respectfully ask that they be permitted to brief and argue the issue of this removal  
3 prior to any order remanding this case. In the event that the Court decides that  
4 remand is proper, Defendants ask that the Court retain jurisdiction and allow them  
5 to file a motion asking this Court to certify any remand order for interlocutory  
6 review by the Ninth Circuit, pursuant to 28 U.S.C. § 1292(b).

### III. CONCLUSION

In sum, Defendants hereby remove the above-captioned action from the Superior Court of the State of California, County of San Luis Obispo, to the United States District Court for the Central District of California.

Dated: April 7, 2022

By: /s/ Shannon E. Beamer

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Shannon E. Beamer

Nicole N. King

Attorneys for Defendants  
MERCK & CO., INC., MERCK SHARP  
& DOHME CORP., ORGANON & CO.,  
and ORGANON LLC

## PROOF OF SERVICE

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2300, Los Angeles, California. \_\_\_\_\_.

On April 7, 2022, I served a copy of the foregoing document(s) described as **NOTICE OF REMOVAL AND REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332 (a), 1441(b), AND 1446 BY DEFENDANTS MERCK & CO., INC., MERCK SHARP & DOHME CORP., ORGANON & CO., AND ORGANÓN LLC** on the interested parties in this action addressed as follows:

Kevin P. Roddy,  
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By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

**BY MAIL (FRCP 5(b)(2)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on April 7, 2022, at Los Angeles, California.

Kassandra Valdovinos